

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 31 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0178-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
GREGORY ALLEN STANHOPE,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-08635

Honorable John E. Davis, Judge

REVIEW GRANTED; RELIEF DENIED

Gregory Stanhope

Florence
In Propria Persona

P E L A N D E R, Chief Judge.

¶1 After a jury trial, petitioner Gregory Allen Stanhope was convicted of two counts each of armed robbery, kidnapping, and aggravated assault and one count of first-degree burglary. He was sentenced to a combination of concurrent and consecutive, aggravated prison terms. This court affirmed the convictions and sentences on appeal. *State v. Stanhope*, 139 Ariz. 88, 95, 676 P.2d 1146, 1153 (App. 1984). We also denied relief on

review of the trial court's denial of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., in what appears to have been Stanhope's fifth such proceeding. *State v. Stanhope*, No. 2 CA-CR 01-0184-PR (memorandum decision filed Oct. 30, 2001). In this petition for review, Stanhope challenges the trial court's April 17, 2006 order, denying his motion for rehearing of the court's March 20, 2006 order dismissing his December 2005 petition for post-conviction relief, in which he claimed that he was entitled to relief based on significant changes made to the sentencing statutes since he was sentenced in 1982 and that two of the aggravating circumstances the judge had relied on at sentencing were improper.

¶2 Absent a clear abuse of discretion, we will not disturb the trial court's decision to deny Stanhope's request for post-conviction relief. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). We see no such abuse.

¶3 In imposing the aggravated prison terms in 1982, the sentencing judge cited the following as aggravating circumstances: infliction of serious physical injury, use of a deadly weapon and dangerous instrument during the commission of the offenses, commission of the offenses in an especially cruel and depraved manner, and commission of the offenses while released "on bond." Stanhope contended in his post-conviction petition that "there ha[ve] been significant changes to A.R.S. §§ 13-701(C) and [A.R.S.] § 13-702 that . . . apply retroactively to" his sentences. Specifically, he claimed the first two aggravating circumstances had been permitted under former § 13-702(D)(1) and (2), now numbered as

§ 13-702(C)(1) and (2), but that these subsections have since been amended to prohibit the use of either factor if it was “an essential element of the offense of conviction or has been utilized to enhance the range of punishment under [A.R.S. §] 13-604.” 1993 Ariz. Sess. Laws, ch. 255, § 11.

¶4 Consistent with well-established law, the legislature specifically provided that these and other amendments to § 13-702 in 1993 were to “apply only to persons who commit a felony offense after the effective date of this act.” 1993 Ariz. Sess. Laws, ch. 255, § 99, as amended by 1994 Ariz. Sess. Laws, ch. 236, § 17, effective July 17, 1994, retroactively effective to January 1, 1994; *see also* U.S. Const. art. I, § 10 (prohibiting enactment of laws ex post facto); Ariz. Const. art. II, § 25 (same); A.R.S. § 1-246 (criminal defendant must be punished according to penalty that existed at time offense was committed). Thus, the trial court correctly concluded Stanhope was not entitled to relief on this claim, and Stanhope has not established otherwise on review.

¶5 Similarly, the trial court correctly denied relief on his claim that amendments to the sentencing ranges provided in A.R.S. § 13-701 that reduced the penalties for class two and class three felonies apply to him. Nor did the trial court abuse its discretion by denying Stanhope’s request for relief based on A.R.S. § 13-702.01(A), which pertains to super-aggravated prison terms. Stanhope relies on the statute for the proposition that “Arizona is a ‘balancing’ state that imposes a sentence balanced between the found aggravation and mitigating factors and requires two proven and found aggravation circumstances to impose

a ‘super-aggravated’ sentence.” But the statute was not enacted until 1993, long after Stanhope had committed these offenses. *See* 1993 Ariz. Sess. Laws, ch. 255, § 12. The statute is neither applicable nor implicated because Stanhope received aggravated prison terms, not super-aggravated terms, which did not exist at the time he was sentenced.

¶6 Finally, Stanhope’s claim that the judge considered two inappropriate factors as aggravating circumstances—that he had committed the offenses while “out on bond” and in a cruel and depraved manner—is precluded. Stanhope could have raised the claim in previous post-conviction proceedings or on appeal. *See* Ariz. R. Crim. P. 32.2. Nor has he persuaded us the error is fundamental and the sentences unlawful.

¶7 We grant the petition for review. But for the reasons stated herein, we deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

GARYE L. VÁSQUEZ, Judge